



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 07 सितम्बर, 2019/16 भाद्रपद, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated the 20th April, 2019

No. Shram(A) 6-2/2014 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh.

Sl.No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	381/16	Kushla	E.E. HPPWD, Killar	18-02-2019
2.	106/18	Ajay Kumar	M.D. M/s Punjab Laminates	19-02-2019
3.	164/16	Man Dev	E.E. HPPWD, Killar	19-02-2019
4.	64/17	Nawang Dorze	E.E. I&PH, Killar	19-02-2019
5.	198/16	Tirta Kumari	E.E. HPPWD, Killar	20-02-2019
6.	130/16	Binda Kumar	E.E. I&PH/HPPWD, Killar	20-02-2019
7.	197/16	Fagun Devi	E.E. I&PH/HPPWD, Killar	20-02-2019
8.	22/16	Sita Devi	E.E. I&PH/HPPWD, Killar	21-02-2019
9.	565/16	Jiwan Kumar	E.E. HPPWD, Dharampur	21-02-2019
10.	729/16	Parveen Kumar	E.E. I&PH, Kaza	22-02-2019
11.	74/18	Shivender Kumar	M.D. M/s Horizon Polymers	26-02-2019
12.	433/16	Man Dei	E.E. HPPWD, Killar	26-02-2019
13.	441/16	Mangal Chand	E.E. HPPWD, Killar	27-02-2019
14.	199/17	Sonia Pathania	M.D. M/s Sunline Hydro Power	28-02-2019
15.	440/16	Roop Singh	E.E. HPPWD, Killar	28-02-2019
16.	160/14	Monu Kumar	Registrar CSK, HPKVV Palampur	26-02-2019

By order,
NISHA SINGH, IAS,
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM- INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 381/2016
Date of Institution : 01-6-2016
Date of Decision: 18-02-2019

Smt. Kushla d/o Shri Chana Ram, r/o Village Pargwal, P.O. Karwas at present w/o Shri Surinder, VPO Pragan, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Tarshem Kumar, ADA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Kushla d/o Sh. Chana Ram, Village Pargwal, P.O. Karwas at present w/o Sh. Surinder V.P.O. Pragan, Tehsil Pangi, District Chamba, H.P. during 10/2002 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 43 days during the year 1998 to 10/2002 and has raised her industrial dispute *vide* demand notice dated nil (received in the office of the Labour Officer Chamba on 23-6-2012) after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as dailywaged beldar on musterroll basis, without any appointment letter, in the year 1994. She continuously worked upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh had fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short) Act. It is further alleged that the respondent had given fictional breaks to the petitioner *w.e.f.* 1994 to 2004 to deprive her from permanent status which was unfair labour practice under Section 25-T and 25-U of the Act. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of her termination, the persons junior to her were retained in service by the respondent. The respondent had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Shri Jeet Singh, Geeta Ram, Smt. Laxmi Devi, S/Sh. Baldev, Parkash Chand, Tirlok Chand, Hari Ram and Smt. Ram Dei. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Dev Raj, Ram Singh s/o Shri Bir Chand, Ram Singh s/o Sh. Prem Lal, Gautam Singh, and Mohinder Singh. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was

asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and who remained engaged till the year 2002. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2002, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2011, *i.e.* after about 09 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to chargesheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 9-3-2018:—

- (1) Whether termination of the services of petitioner by the respondent during October, 2002 is/was improper and unjustified as allege ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Kushla appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list Ex. PW1/B and copy of Mandays chart Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for

determination, my findings thereon are as under: —

- Issue No. 1 : Yes
 Issue No. 2 : Discussed
 Issue No. 3 : No
 Issue No. 4 : No
 Relief : Petition is partly allowed awarding lump-sum compensation of 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Kushla (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had been engaged as a daily waged beldar for the first time in the year 1998. Volunteered that, she had been engaged in the year 1994. She denied that she had not worked with the respondent from 1994 upto May, 1998. She also specifically denied that in between she of her own had been absenting herself. She denied that she had worked intermittently from the year 1998 upto October, 2002. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She admitted that she did not know Shri Sanjay Kumar. She denied that she had not made representation since October, 2002 upto July, 2012 anywhere. She admitted that regarding representation she could not produce any document. Volunteered that, she cannot produce it today.

11. Ex. PW1/B is the copy of seniority list relating to Shri Jeet Singh and others.

12. Ex. PW1/C is the copy of mandays chart relating to Shri Tek Chand and fourteen others.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till September, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1998 and she had worked as such upto the year 2002. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the year 1998 by the respondent and had worked only upto October, 2002, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 1998 for the first time as daily waged beldar and she had only worked as such upto October, 2002. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1994 and that she had worked upto September, 2004, as claimed.

17. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 132 days in the year 1998, 162.5 days in the year 1999, 155 days in the year 2000, 166 days in the year 2001 and for 103 days in the year 2002. Thus, in her total service for a period of five years in between June, 1998 to October, 2002, she had only worked for 718.5 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September, 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 2002 the petitioner had worked for 103 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Jai Dass and sixteen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Thumni Devi were engaged in the year 1992, those of Shri Ram Kishan and Smt. Laxmi were engaged in the year 1994, those of S/Shri Baldev and Prem Lal in the year 1995, those of S/Shri Parkash Chand, Hari Ram and Rattan Chand were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of S/Shri Sucheta Ram and Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial Nos.16 & 17, were engaged as per the orders of this

Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 1998. There is nothing on record to show that S/Shri Jai Dass, Tek Chand, Sucheta Ram, Budhi, Smt. Ram Dei, were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

20. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given her age as 40 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

23. The Learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC). . . .”

24. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99(Lab)ID/2016/Chamba, dated 24th May, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 718.5 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2002, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about ***nine years*** *i.e.* demand notice was given on 06-10-2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 40 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump-sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3 :

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on

issues *supra*, the respondent is hereby directed to pay a compensation of 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. 106/18

Sh. Ajay Kumar s/o Shri Sunil Kumar, r/o House No.79, Ward No.4, V.P.O. Santokhgarh, District Una, H.P.

Versus

The Employer/Managing Director, M/s Punjab Laminates Private Limited, 9-10, Industrial Mehatpur, District Una, H.P.

19-02-2019 Present

: None for the petitioner.

Sh. Jasvir Singh, HR, A.R. for the respondent.

Letter of authorisation has been filed on behalf of respondent. Process issued for service of petitioner has been received back served through his family member, *i.e.*, brother. Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

19-02-2019 Present

: None for the petitioner.

Sh. Jasvir Singh, (HR) A.R. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is

2.30 P.M. None appearance of petitioner or his Ld. Counsel today is indicative of the fact that he is not interested to pursue the present reference and accordingly the reference is disposed of for want of prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
19-02-2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA , AT DHARAMSHALA (H.P.)

Ref. No. : 164/2016
Date of Institution : 17-03-2016
Date of Decision : 19-02-2019

Shri Man Dev s/o Shri Doli Ram, r/o Village Kawas, P.O. Karail, Tehsil Pangi, District Chamba, H.P.

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Sanjeev Singh Rana, D.A. : Sh. Vijay Kaundal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Man Dev s/o Sh. Doli Ram, Village Kawas, P.O. Karail, Tehsil Pangi, Distt. Chamba, H.P. from 2005, by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 195 days, 185 days, 148 days, 138 days, 171 days, 151 days, 138 days, 94 days and 87 days during the year 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 and has raised his industrial dispute *vide* demand notice dated 1-9-2012 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working

period mentioned above and delay of more than **7 years** in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the month of March, 1997. He intermittently worked upto October, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh had fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short) Act. It is further alleged that the respondent had unlawfully terminated the services of the petitioner. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of his termination, the persons junior to him were retained in service by the respondent. It is asserted that during the year 2003 to 2005, the respondent had disengaged the services of more than 500 daily waged workmen in different Sub Division *i.e.* IPH and HPPWD. The respondent had violated the principle of 'first come last go'. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Janto Devi, Jeet Singh, Gijja Ram, Laxmi Devi and Gian Chand. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Shma Lal and Gautam Singh. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

"the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to."

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who remained engaged till the year 2005. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2005, he certainly would have raised an industrial dispute, but the same was

raised by him before the Labour Officer only in the year 2012, *i.e.* after about 07 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to chargesheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30-8-2017:—

- (1) Whether the termination of services of petitioner by the respondent *w.e.f.* 2005 is/was illegal and unjustified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
- (3) Whether the claim petition is not maintainable in the present form as alleged?
..OPR.
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged?

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Man Dev appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list of 15 workers Ex. PW1/B and copy of seniority list of 10 workers Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the Learned Counsel/Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under: —

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump-sum compensation of 1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common

appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Man Dev (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged as a daily waged beldar for the first time in the year 1997. He also specifically denied that in between he of his own had been absenting himself. He denied that he had worked intermittently from the year 1997 upto October, 2005. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He admitted that he did not know Shri Sanjay Kumar. He denied that he had not made representation since October, 2005 upto 2012 anywhere.

11. Ex. PW1/B is the copy of mandays chart relating to Shri Tek Chand and others.

12. Ex. PW1/C is the copy of seniority list relating to Shri Jeet Singh and others.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of March, 1997 and had worked as such till October, 2005. The respondent admitted the fact in the reply that the petitioner was appointed as a daily waged beldar in the year 1997 and he had worked as such upto the year 2005. It was also suggested to the petitioner (PW1) in his cross-examination that he had been engaged as a daily waged beldar by the department in the year 1997. He admitted the suggestion. The respondent has placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of March, 1997 for the first time as daily waged beldar and he had worked as such upto October, 2005. Manifest that the claim of the petitioner that he was appointed by the respondent in the year 1997 as a daily waged beldar and that he worked as such upto October, 2005 is duly established on record.

17. As per the mandays chart Ex. RW1/B, the petitioner had worked for 195 days in the year 1997, 185 days in the year 1998, 148 days in the year 1999, 138 days in the year 2000, 171 days in the year 2001, 151 days in the year 2002, 138 days in the year 2003, 94 days in the year 2004 and for 87 days in the year 2005. Thus, in his total service for a period of nine years in between March, 1997 to October, 2005, he had worked for 1307 days. Be it recorded here that the

petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that from October, 2004 till September, 2005 the petitioner had only worked for 77 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Jai Dass and sixteen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Thumni Devi were engaged in the year 1992, those of Shri Ram Kishan and Smt. Laxmi were engaged in the year 1994, those of S/Shri Baldev and Prem Lal in the year 1995, those of S/Shri Parkash Chand, Hari Ram and Rattan Chand were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of S/Shri Sucheta Ram and Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial Nos. 16 & 17, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is March, 1998. There is nothing on record to show that S/Shri Jai Dass, Tek Chand, Sucheta Ram, Budhi, Smt. Ram Dei, were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

20. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of

the petitioner that they were junior to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

23. The Learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC). . . .”

24. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99(Lab)ID/2016/Chamba, dated 8th March, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute

before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 1307 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2005, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about *seven years i.e.* demand notice was given on 01-9-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 46 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump-sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of 1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of 1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs.

The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref No. : 64/2017
Date of Institution : 22-02-2017
Date of Decision : 19-02-2019

Shri Nawang Dorze s/o Shri Ganga Ram, r/o Village Sural Bhatori, P.O. Sural Tai, Tehsil Pangi, District Chamba, H.P.

Versus

The Executive Engineer, I.P.H.&H.P.P.W.D Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj Adv.
For the Respondent : Sh. Soham Kaushal, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Nawang Dorze s/o Sh. Ganga Ram, Village Sural Bhatori, P.O. Sural Tai, Tehsil Pangi, Distt. Chamba, H.P. during year 2005 by the Executive Engineer, IPH & HPPWD Division, Pangi at Killar Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 842.5 days during the year 1995 to 1997 and the year 1999 and thereafter 2001 to 2004 and has raised his industrial dispute *vide* demand notice dated 13-12-2015 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster-roll basis, without any appointment letter, in the year 1991. He continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Tek Chand, Baldev, Trilok Chand and Hari Ram. He was not given an opportunity of re-employment. From the date of his

disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2015, *i.e.* after about 11 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 6-3-2018:—

- (1) Whether termination of the services of the petitioner by the respondent during year, 2005 is/was improper and unjustified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
- (3) Whether the claim petition is not maintainable in the present form as alleged?

..OPR.

(4) Whether the claim petition is bad on account of delay and laches as alleged?

..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Nawang Dorze appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copy of seniority list Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No.4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Nawang Dorze (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had been engaged as a daily waged beldar from July, 1994 upto September, 2004. He also specifically denied that in between he of his own had been absenting himself. Volunteered that, he had worked about for 15-16 years. He admitted that he had not worked in the year 2005. Volunteered that, he had been disengaged in the year 2005. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He admitted that the department/respondent had rightly given his working details. However, he denied that the respondent had never removed him from work or given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re-engaged as per the orders of the Court. He further admitted that he had not made representation since the year 2004 upto the year 2015.

12. Ex. PW1/B is the copy of mandays chart relating to Sh. Suraj Ram & ors.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the

Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He denied that the petitioner had worked continuously from the year 1991 upto the year 2005. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1991 and had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1994 and he had worked as such upto the year 2004. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the month of July, 1994 by the respondent and had worked only upto September, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of July, 1994 for the first time as daily waged beldar and he had only worked as such upto September, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1991 and that he had worked upto October, 2005, as claimed.

17. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 132 days in the year 1994, 27 days in the year 1996, 87 days in the year 1997, 94½ days in the year 1999, 40 days in the year 2001, 126 days in the year 2002, 113 days in the year 2003 and for 101 days in the year 2004. Thus, in his total service for a period of eight years in between July, 1994 to September, 2004, he had only worked for 720½ days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that in the year, 2004 the petitioner had only worked for 101 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct.

Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No.5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is July, 1994. There is nothing on record to show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chunku Ram, Parkash Chand, Budhi Ram, Bameshwar Dutt, Raj Kumar, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, Hari Ram, Baldev, Balwant Kumar and Chuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

20. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were junior to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

23. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP

No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

24. In ***Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon’ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon’ble Supreme Court in ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99(Lab.)ID/2016/Chamba, dated 9th January, 2017. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned Assistant District Attorney merits rejection and is rejected.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon’ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 720½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after more than *ten years i.e.* demand notice was given on 3-12-2015. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 40 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon’ble Supreme Court in *Geetam Singh’s case (supra)*, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

27. In view the discussion and findings arrived at by me above, a lump-sum compensation

of 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3:

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref No.	: 198/2016
Date of Institution	: 26-3-2016
Date of Decision	: 20-02-2019

Smt. Tirta Kumari w/o Shri Devi Chand, r/o Village Bakhoun, P.O. Kothi Karyoni, Tehsil Pangi, District Chamba, H.P.

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Tirta Kumari w/o Sh. Devi Chand, r/o Village Bakhoun, P.O. Kothi Karyoni, Tehsil Pangi, District Chamba, H.P. from 2004, by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 145 days, 60 days, 116 days, 63 days, 112 days, 122.5 days and 99 days during the year 1997, 1998, 2001, 2002, 2003 and 2004 and had raised her industrial dispute *vide* demand notice dated 3-5-2012, after delay of more than 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past services benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1989. She continuously worked upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh had fixed criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short) Act. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of her termination, the persons junior to her were retained in service by the respondent. The respondent had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Janto Devi, Jeet Singh, Gijja Ram, Laxmi Devi and Gian Chand. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Sham Lal and Gautam Singh. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case: —

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of

maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1999 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangti Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30-8-2017:—

- (1) Whether the termination of services of petitioner by the respondent *w.e.f.* 2004 is/was illegal and unjustified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
- (3) Whether the claim petition is not maintainable in the present form as alleged?
..OPR.
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged?

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Tirta Kumari appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list Ex. PW1/B and copy of Mandays chart Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Tirta Kumari (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had been engaged as a daily waged beldar for the first time in the year 1999. Volunteered that, she had been engaged in the year 1989. She denied that she had not worked with the respondent from 1989 upto the year 1999. She denied that the respondent had not given breaks to her from the year 1999 to September, 2004. She also specifically denied that in between she of her own had been absenting herself. She admitted that she had worked upto September, 2004. She denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She admitted that she did not know Shri Sanjay Kumar. She denied that she had not made representation since September, 2004 upto May, 2012 anywhere. She admitted that regarding representation she could not produce any document. Volunteered that, she cannot produce it today.

11. Ex. PW1/B is the copy of mandays chart relating to Shri Tek Chand and fourteen others.

12. Ex. PW1/C is the copy of seniority list relating to Shri Jeet Singh and others.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1989 and had worked as such till September, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1999 and she had worked as such upto the year 2004. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the year 1999 by the respondent and had not worked with the department from the year 1989 upto the year 1999, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of May, 1999 for the first time as daily waged beldar and she had only worked as such upto September, 2004. The petitioner admitted the fact that she had only worked with the department upto September, 2004. The claimant/petitioner has not placed and exhibited on record any document to show that she was appointed by the respondent in the year 1989, as claimed by her.

17. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 133 days in the year 1999, 142 days in the year 2000, 148 days in the year 2001, 138 days in the year 2002, 112 days in the year 2003 and for 106 days in the year 2004. Thus, in her total service for a period of six years in between May, 1999 to September, 2004, she had only worked for 779 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September, 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that from September, 2003 upto August, 2004 the petitioner had only worked for 84 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Jai Dass and sixteen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Smt. Thumni Devi were engaged in the year 1992, those of Shri Ram Kishan and Smt. Laxmi were engaged in the year 1994, those of S/Baldev and Prem Lal in the year 1995, those of S/Parkash Chand, Hari Ram and Rattan Chand were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of S/Shri Sucheta Ram and Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003, those of

Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial Nos.16 & 17, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1999. There is nothing on record to show that S/Shri Tek Chand, Sucheta Ram, Budhi and Smt. Ram Dei, were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

20. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given her age as 40 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

23. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No.95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC).”

24. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative***

Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99(Lab)ID/2016/Chamba, dated 15th March, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 779 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about ***eight years i.e.*** demand notice was given on 03-5-2012. It is also pertinent to mention here that the petitioner on the date of filing of the claim petition, was aged 40 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues Nos. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3 :

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref No.	: 130/2016
Date of Institution	: 04-3-2016
Date of Decision	: 20-02-2019

Shri Binda Kumar s/o Shri Nihal Chand, r/o Village and Post Office Mouch, Tehsil Pangi, District Chamba, H.P.

Versus

The Executive Engineer, I.P.H/H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Binda Kumar s/o Shri Nihal Chand, r/o Village and Post Office Mouch, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 6-10-2011 regarding his alleged illegal termination of

service during October, 2002 suffers from the vice of delay and laches? If not, Shri Binda Kumar s/o Shri Nihal Chand, r/o Village and Post Office Mouch, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2002 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster-roll basis, without any appointment letter, in the year 1999. He intermittently worked upto October, 2002 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh had fixed criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short) Act. It is alleged that the respondent had unlawfully terminated the services of the petitioner. It is also the case of the petitioner that he had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of his termination persons junior to him were retained in service by the respondent. It is asserted that during the year 2003 to 2005, the respondent had disengaged the services of more than 500 daily waged workmen in different Sub Divisions *i.e.* IPH and HPPWD. The respondent had violated the principle of 'first come last go'. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Jai Dass, Tek Chand, Baldev, Amar Nath, Balak Chand, Shyam Lal, Prakash Chand, Sucheta Ram, Trilok Chand, Hari, Hari Ram, Ram Dei and Budhi Ram. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands, namely, S/Sh. Shama Lal, Gautam Singh and Dev Raj. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case: —

"the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to."

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1999 and who remained engaged till the year 2002. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had

ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2002, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 09 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 11-9-2017:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 06-10-2011 *qua* his termination of service during October, 2002 by respondent suffers from the vice of delay and laches as alleged?
- (2) Whether termination of the services of petitioner by the respondent during October, 2002 is/was illegal and unjustified as alleged?
- (3) If issue no.1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to?
- (4) Whether the claim petition is not maintainable in the present form as alleged?

..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Binda Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list of 15 workers Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel/Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of 60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Binda Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he was engaged as a daily waged beldar from May, 1999 upto October, 2002. He specifically denied that in between he of his own had been absenting himself. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He admitted that he did not know Shri Sanjay Kumar. He denied that he had not made representation since October, 2002 upto October, 2011 anywhere. He admitted that regarding representation he could not produce any document. Volunteered that, he could not produce it today.

11. Ex. PW1/B is the copy of mandays chart relating to Shri Tek Chand and others.

12. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the mandays chart relating to the co-workers.

15. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1999 and had worked as such till October, 2002. The respondent also took the stand that the petitioner was appointed as a daily waged beldar in the year 1999 and he had worked as such upto the year 2002. The petitioner (PW1) in his cross-examination admitted the fact that he had been engaged as daily waged beldar in May, 1999 by the respondent and had worked as such upto October, 2002. Placed on record by the respondent is the mandays chart pertaining to the petitioner as Ex. RW1/B. It also reveals that the services of the petitioner had been engaged by the respondent in the month of May, 1999 as a daily waged beldar and he had only worked as such upto October, 2002.

16. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 161 days in the year 1999, 132 days in the year 2000, 133 days in the year 2001 and for 127 days in the year 2002. Thus, in his total service for a period of four years in between May, 1999 to October, 2002, he had only worked for 533 days. Be it recorded here that the petitioner had not worked for more

than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2002. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that from October, 2001 upto September, 2004 the petitioner had worked for 152 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

17. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Jai Dass and sixteen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Smt. Thumni Devi were engaged in the year 1992, those of Shri Ram Kishan and Smt. Laxmi were engaged in the year 1994, those of S/Baldev and Prem Lal in the year 1995, those of S/Parkash Chand, Hari Ram and Rattan Chand were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of S/Shri Sucheta Ram and Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial nos.16 & 17, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1999. There is nothing on record to show that S/Shri Tek Chand, Sucheta Ram, Budhi and Smt. Ram Dei, were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

19. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

20. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of

the petitioner that they were junior to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

21. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

22. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC).”

23. In ***Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99(Lab)ID/2015/Chamba, dated 19th February, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

25. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute

before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 533 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2002, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about *nine years i.e.* demand notice was given on 06-10-2011. It is also pertinent to mention here that the petitioner on the date of filing of the claim petition, was aged 36 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of 60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative.

Issue No. 4 :

27. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 197/2016
Date of Institution : 26-3-2016
Date of Decision : 20-02-2019

Smt. Fagnu Devi w/o Shri Gian Chand, r/o Village Bakhoun, P.O. Koti Karyoni, Tehsil Pangi, District Chamba, H.P.

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

“Whether alleged termination of services of Smt. Fagnu Devi w/o Sh. Gian Chand, r/o Village Bakhoun, P/O Koti Karyoni, Tehsil Pangi, District Chamba, H.P. from 2005, by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 81 days, 133 days, 146 days, 127 days, 128 days and 102 days and 96 days during the year 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 and had raised her industrial dispute *vide* demand notice dated 2-6-2012 after delay of more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1994. She continuously worked upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh had fixed criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short) Act. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of her termination, the persons junior to her were retained in service by the respondent. The respondent had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Janto Devi, Jeet Singh, Gijja Ram, Laxmi Devi and Gian Chand. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Sham Lal and Gautam Singh. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is

entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case: —

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and who remained engaged till the year 2005. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 2005, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 07 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30-8-2017:—

- (1) Whether the termination of services of petitioner by the respondent *w.e.f.* 2005 is/was illegal and unjustified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged?

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Fagunu Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list Ex. PW1/B and copy of Mandays chart Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under: —

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Fagunu Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had been engaged as a daily waged beldar for the first time in the year 1998. Volunteered that, she had been engaged in the year 1994. She denied that she had not worked with the respondent from the year 1994 upto July, 1998. She also specifically denied that in between she of her own had been absenting herself. She denied that she had worked intermittently from the year 1998 upto October, 2005. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She admitted that she did not know Shri Sanjay Kumar. She denied that she had not made representation since October, 2005 upto July, 2012 anywhere. She admitted that regarding representation she could not produce any document. Volunteered that, she cannot produce it today.

11. Ex. PW1/B is the copy of seniority list relating to Shri Jeet Singh and others.

12. Ex. PW1/C is the copy of mandays chart relating to Shri Tek Chand and fourteen others.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1998 and she had worked as such upto the year 2005. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the year 1998 by the respondent and had not worked from the year 1994 upto July, 1998, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of August, 1998 for the first time as daily waged beldar and she had only worked as such upto October, 2005. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1994, as claimed by her.

17. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 81 days in the year 1998, 133 days in the year 1999, 135 days in the year 2000, 146 days in the year 2001, 127 days in the year 2002, 128 days in the year 2003, 102 days in the year 2004 and for 96 days in the year 2005. Thus, in her total service for a period of eight years in between August, 1998 to October, 2005, she had only worked for 948 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that from October, 2004 upto September, 2004, the petitioner had worked for 72 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on

the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Jai Dass and sixteen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Thumni Devi were engaged in the year 1992, those of Shri Ram Kishan and Smt. Laxmi were engaged in the year 1994, those of S/Shri Baldev and Prem Lal in the year 1995, those of S/Shri Parkash Chand, Hari Ram and Rattan Chand were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of S/Shri Sucheta Ram and Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial Nos.16 & 17, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is August, 1998. There is nothing on record to show that S/Shri Jai Dass, Tek Chand, Sucheta Ram, Budhi and Smt. Ram Dei, were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

20. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged, does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given her age as 59 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

23. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal***

Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. Vs. Dilu Ram (CWP No.95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC).”

24. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh vide his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-5/99(Lab)ID/2016/Chamba, dated 10th March, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

26. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 948 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2005, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about *seven years i.e.* demand notice was given on 02-6-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 59 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in *Geetam Singh's case (supra)*, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum

compensation of 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3:

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 22/2016
Date of Institution : 20-1-2016
Date of Decision : 21-02-2019

Smt. Sita Devi w/o Shri Sher Singh, r/o Village and Post Office Punto, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba,
H.P. *...Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Sita Devi w/o Shri Sher Singh, r/o Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 2-6-2012 regarding her alleged illegal termination of service during September 2004 suffers from the vice of delay and laches? If not, whether termination of the services of Smt. Sita Devi w/o Shri Sher Singh, r/o Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. during September 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster-roll basis, without any appointment letter, in the year 1994. She continuously worked upto September 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh had fixed criteria of 160 days for the purpose of continuous service under section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short) Act. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of her termination, the persons junior to her were retained in service by the respondent. The respondent had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Janto Devi, Jeet Singh, Gijja Ram, Laxmi Devi and Gian Chand. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Shma Lal and Gautam Singh. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the

averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 4-7-2018:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-06-2012 qua her termination of service during Sept. 2004 by respondent suffers from the vice of delay and laches as alleged? ..*OPP.*
- (2) Whether termination of the services of petitioner by the respondent during Sept. 2004 is/was legal and justified as alleged? ..*OPP.*
- (3) If issue no.1 or issue no. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief

6. Thereafter, parties to the list were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Sita Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list Ex. PW1/B and copy of list of the workers Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Sita Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she had been engaged as a daily waged beldar from June 1994 upto September 2004. She specifically denied that in between she of her own had been absenting herself. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She admitted that she did not know Shri Sanjay Kumar. She denied that she had not made representation since September 2004 upto June 2012 anywhere. She admitted that regarding representation she could not produce any document. Volunteered that, she could not produce it today.

11. Ex. PW1/B is the copy of seniority list relating to Shri Jeet Singh and others.

12. Ex. PW1/C is the copy of mandays chart relating to Shri Tek Chand and fourteen others.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were reengaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that her services were engaged as a daily waged beldar

by the respondent in the year 1994 and had worked as such till September 2004. There appears to be no dispute in this regard. The respondent claimed in the reply that the petitioner was appointed as a daily waged beldar in the year 1994 and she had worked as such upto the year 2004. Then, it was suggested to the petitioner (PW1) in her cross-examination that she had worked as a daily waged beldar with the department from June 1994 upto September 2004. She admitted the suggestion. The putting of this suggestion by the respondent and its admission by the petitioner further leaves no doubt in mind that the petitioner was initially engaged by the department as a daily waged beldar in June 1994 and that she had worked as such upto September 2004. Further, placed on record by the respondent is the mandays chart pertaining to the petitioner as Ex. RW1/B. It also reveals that the services of the petitioner had been engaged by the respondent in the month of June 1994 as a daily waged beldar and she had worked as such upto September 2004. Thus, it stands established on record not only for the pleadings, but also the ocular and documentary evidence led on record by the parties that the petitioner had been engaged by the respondent as a daily waged beldar in the month of June 1994 and that she had worked as such upto September 2004.

17. As per the mandays chart Ex. RW1/B, the petitioner had worked for 83 days in the year 1994, 49 days in the year 1995, 78 days in the year 1996, 28 days in the year 1997, 149 days in the year 1998, 134 days in the year 1999, 101 days in the year 2000, 107 days in the year 2001, 87 days in the year 2002, 108 days in the year 2003 and for 103 days in the year 2004. Thus, in her total service for a period of eleven years in between June 1994 to September, 2004, she had only worked for 1027 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that from September 2003 upto August 2004 the petitioner had worked for 122 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Jai Dass and sixteen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Smt. Thumni Devi were engaged in the year 1992, those of Shri Ram Kishan and Smt. Laxmi were engaged in the year 1994, those of S/Shri Baldev and Prem Lal in the year 1995, those

of S/ Parkash Chand, Hari Ram and Rattan Chand were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of S/Shri Sucheta Ram and Budhi Ram in the year 2001, that of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial Nos. 16 & 17, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June 1994. There is nothing on record to show that S/Shri Jai Dass, Tek Chand, Sucheta Ram, Budhi and Smt. Ram Dei, were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

20. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged, does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given her age as 47 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

23. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (*See Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)."

24. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under section 10(1) of the Act, *vide* Notification No.11-5/99(Lab)ID/2015/Chamba, dated 8th January, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1027 days as per mandays chart on record and that the services of petitioner were disengaged in September 2004, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about ***eight years i.e.*** demand notice was given on 02-6-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 47 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump-sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of 1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 2 and 3 are answered and decided accordingly, while issue no.1 is answered in the negative.

Issue No. 4:

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney

appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of Rs. 1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 565/2016
Date of Institution : 24-8-2016
Date of Decision : 21-02-2019

Shri Jiwan Kumar s/o Shri Mahajan Ram, r/o Village Balena, P.O. Marhi, Tehsil Sarkaghat,
District Mandi, H.P.

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla
2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Jiwan Kumar s/o Sh. Shiv Kumar, Vill. & PO Tanehar, Tehsil Sarkaghat, Distt. Mandi, H.P. during 1/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, 171002 (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 9/1998 to 1/1999, only for 110 days, and has raised his industrial dispute *vide* demand notice dated 25-5-2015 after more than 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as daily waged beldar on muster-roll basis in the month of September 1998. He worked upto January, 1999, who had completed more than 240 days during his service with the respondents in each calendar year, however, after termination of the services of the petitioner, he was duly covered under the definition of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is further alleged that the respondents had unlawfully terminated the services of the petitioner. It is also his case that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof, which was clearly violative of the provisions of Section 25-F of the Act. At the time of his termination, the persons junior to him were retained in service by the respondents. The respondents had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondents are S/Sh./Smt. Shashi Pal, Roshani Devi, Mamta Devi and Inder Singh. It is further alleged that after termination of the services of the petitioner, the respondents had appointed new/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondents time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondents is illegal and unjustified. It is violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral order of termination/retrenchment of the services of the petitioner by the respondents be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondents appeared. A detailed reply was filed controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the month of September 1998 and who remained engaged till the month of December 1998. He had worked intermittently with the department and had left the job of his own sweet will, and had not completed 240 days in each

calendar year, so there was no need to serve any notice under Section 25-F of the Act. It is denied that the respondents had terminated the services of the petitioner. It was further asserted that the respondents had retrenched daily waged workmen in the month of February 2004 and July, 2005 respectively, but the petitioner had left the job of his own sweet will in the year 1999. Regarding the allegation of engagement of persons junior to the petitioner, namely, Smt. Mamta Devi and Sh. Inder Singh, it was asserted that they were engaged on compassionate grounds and as such the respondents had not violated the provisions of Section 25-G of the Act. No other workmen junior to the petitioner had ever been retained in service by the respondents. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondents had not violated the principle of 'last come first go'. If the petitioner had been terminated, he certainly would have raised an industrial dispute, but the same was raised by him only in the year 2014, *i.e.* after about 15 years, hence the same is bad due to delay and laches. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. In these circumstances, the respondents prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 19-7-2017:

- (1) Whether termination of services of the claimant/petitioner by the respondents during January 1999 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, parties to the list were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Jiwan Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart of Sh. Shashi Kant Ex. PW1/B, copy of RTI information dated 13-11-2013 Ex. PW1/C. The respondents examined one Shri Jain Pal Naik, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B.

7. Arguments of the learned counsel/Authorized Representative for the petitioner and District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief	:Petition is partly allowed awarding lump-sum compensation of 10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Jiwan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged as a daily waged beldar in the month of September 1998. He denied that he had worked intermittently upto December 1998. Volunteered that, he had worked upto January 1999. He denied that no junior persons had been engaged by the department. He admitted that he had given demand notice in the year 2015. He also admitted that after December 1998, he had not worked with the respondents. He denied that he had left the work of his own after December 1998. Self stated that, he was terminated. He also admitted that he had not given any representations from the month of January 1999 upto the year 2015. Volunteered that, he had orally approached the department. He admitted that he works as a private labourer. He also admitted that he owns land and does agricultural chores.

11. Ex. PW1/B is the copy of mandays chart relating to Shri Shashi Kant.

12. Ex. PW1/C is the copy of letter dated 13-11-2013 regarding Information Under RTI Act, 2005.

13. Conversely, Shri Jai Pal Naik, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He filed his statement by way of an affidavit Ex. RW1/A with solemn affirmation that the petitioner was engaged as a daily waged beldar in February 1999 and had worked intermittently upto September 1999. The petitioner had left the job of his own free will and volition and had not completed 240 days in each calendar year. The services of the petitioner had not been terminated. Workers, namely, Mamta Devi and Inder Singh had been kept on compassionate grounds. Demand notice had been filed by the petitioner after about 15 years, in the year 2014 and he had never approached the respondents during this period. The delay has not been explained by the petitioner.

In the cross-examination, he admitted that when the petitioner was employed by the department, no appointment letter was issued. He admitted that as per the record there is no correspondence regarding the petitioner having left the job. He also admitted that no compensation has been given to the petitioner as per record. He was also categorical that the persons mentioned in para no. 4 of the statement of claim are junior to the petitioner.

14. Ex. RW1/B is the mandays chart relating to Shri Jiwan Kumar s/o Shri Mahajan Ram.

15. The version of the petitioner is that his services were engaged as a daily waged beldar

by the respondents in the month of September 1998 and that he had worked as such till January 1999. The respondents in their reply admitted the fact the department had engaged the petitioner as a daily waged beldar in the month of September 1998. However, they claimed that he had intermittently worked upto December 1998. But, when respondent no. 2 mounted the dock, he claimed that the petitioner had been engaged as a daily waged beldar in February 1999 and he had worked as such intermittently upto September 1999. To buttress this stand of his, he placed on record the mandays chart as Ex. RW1/B. Its perusal discloses that the services of Shri Jiwan Kumar s/o Shri Mahajan Ram were engaged by the respondents in the month of February 1999 for the first time as daily waged beldar and he had only worked as such upto September 1999. However, it is my humble opinion that this document and the ocular testimony of respondent no. 2 to the effect that the petitioner had been engaged in the month of February 1999 and that he had worked as such upto September 1999 cannot be taken into consideration, being beyond pleadings. The claimant/petitioner has not placed and exhibited on record any document to show that he had worked as daily waged beldar with the respondents upto January 1999, as claimed. Rather, while under cross-examination, he was categorical that he had not worked with the department after December 1998. Therefore, in view of the above, it can safely be held that the services of the petitioner were engaged by the respondents in the month of September 1998 and that he had only worked as such upto December 1998.

16. Though, the petitioner has claimed in the statement of claim that he had completed more than 240 days during his service with the respondents, but no mandays chart/document has been proved on record by him in this regard. So, it cannot be said that the petitioner had worked for more than 240 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place in January 1999. Since, it is not established on record that the petitioner had worked for 240 days immediately in the preceding 12 calendar months from the month of his termination, so as to meet the requirement of law of having continuous service of one year, therefore, it was not required of the respondents to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondents had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

17. A plea was taken by the respondents that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondents/employers. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Shri Jai Pal Naik (RW1) clearly admitted that as per the record there is no correspondence with the petitioner of his leaving the job. Thus, the plea of abandonment put forth by the respondents/employers is not established.

18. Ex. PW1/B, the mandays chart of beldar, namely, Shri Shashi Kant, reveals that he was appointed in the year 2002. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner, as per the pleadings and evidence of the parties on record is September 1998. There is nothing on record to show that Shri Shashi Kant was senior to the petitioner. Then, Jai Pal Naik (RW1) while under cross-examination clearly admitted that the names of persons mentioned in para no.4 of the statement of claim were junior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondents/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time

of engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

19. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-G and 25-H of the Act.

20. Faced with the situation, it was contended for the respondents that the junior workers had been engaged and retained in service on compassionate grounds. Shri Jai Pal Naik (RW1) in his substantive evidence claimed that the workers mentioned in the para 4 of the statement of claim were engaged on compassionate grounds, as their parents had expired while in service. However, the dates of deaths of the parents of those persons have not come on the file. Admittedly, those persons are still serving with the respondents/department and their services, as per the admissions made by Shri Jai Pal Naik (RW1), were engaged after the engagement of the services of the petitioner. There is nothing on record to show that the deceased parents of those persons mentioned in para no.4 of the statement of claim were senior to the petitioner. Even if the petitioner has failed to prove on record that he had worked for more than 240 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondents cannot be absolved from their accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

21. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and is doing agricultural chores. Besides this, it has also come in his evidence that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

22. The learned District Attorney for the respondents contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (*See Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC).)....”

23. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation

Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under section 10(1) of the Act, *vide* Notification No.11-23/84(Lab)12/07ID/2016-Mandi, dated 8th August, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

25. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about eight months and that the services of petitioner were disengaged in January 1999, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about *fifteen years i.e.* demand notice was given on 25-5-2015. It is also pertinent to mention here that the petitioner on the date of filing the claim petition was aged 36 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in *Geetam Singh's case (supra)*, the petitioner is not entitled for reinstatement or for back wages, but only for lump-sum compensation.

26. In view of the discussion and findings arrived at by me above and as it is not ascertainable as to for how many days the petitioner has actually worked, a lump-sum compensation of `10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered and decided accordingly, while issue no.4 is answered in the negative and against the respondents.

Issue No. 3 :

27. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondents.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondents are hereby directed to pay a compensation of `10,000/- (Rupees ten

thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of February, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 729/2016
Date of Institution : 15-11-2016
Date of Decision : 22-02-2019

Smt. Parveen w/o Shri Panma Chhering, r/o V.P.O. Tabo, District Lahaul & Spiti, H.P.

..Petitioner.

Versus

The Executive Engineer, I.& P.H. Division Kaza, District Lahaul & Spiti, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Parveen w/o Sh. Panma Chhering, VPO Tabo, Distt. Lahaul-Spiti, H.P. during the years 1997 to 2011 by the Executive Engineer, I&PH Division Kaza, Distt. Lahaul & Spiti, as alleged by the worker *vide* demand notice dated 07-5-2012 (**Copy Enclosed**), is legal and justified? If not, what relief of reinstatement, amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on muster-roll basis in July 1997. She worked under the Assistant Engineer, I&PH, Sub-Division Tabo upto April 2012. The latter used to disengage her services without any written order, so that she could not complete more than 160 days during the aforesaid period. Fictional breaks were given by the respondent upto April 2012. She had come to know from some other workmen that they have been working under Assistant Engineer, I&PH Sub-Division, Kaza. She had raised a demand notice under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short) against the respondent. Its copy stood forwarded to the Labour-cum-Conciliation Officer, Reckong Peo at Kinnaur. Dates were fixed for conciliation from time to time, but the representative of the respondent had claimed that the services of the petitioner could not be engaged continuously. Labour-cum-Conciliation Officer Reckong Peo then had submitted report under section 12(4) of the Act to the appropriate government *i.e.* Labour Commissioner, Himachal Pradesh on dated 12-7-2012. The report was examined but, however, her matter was not referred to the court till the year 2013. Matter of similarly situated workman Smt. Chhering Dolma had been referred by the appropriate government *i.e.* Deputy Labour Commissioner, Himachal Pradesh on 30th July, 2013. Representations were made to the Labour Commissioner as well as to the Principal Secretary (Lab. & Emp.) to the Government of Himachal Pradesh, but without success. The petitioner, thus, had to file a Writ Petition before the Hon'ble High Court of Himachal Pradesh in the month of May 2016. But, in between the appropriate government had referred her dispute to this Court *vide* Notification dated 30th September, 2016. The Writ Petition was accordingly disposed of by the Hon'ble High Court of H.P. on 26th October, 2016. It is further alleged that the services of the petitioner had been engaged and disengaged by giving fictional breaks from the date of her initial appointment *i.e.* July 1997 upto November 2016. Smt. Chhering Dolma, Smt. Chhering Butich, Smt. Padma Dolkar and Smt. Padma Youdon were also working with the respondent on daily waged basis on fictional breaks. The all had raised an industrial dispute and their cases were disposed of by the Court. The act of the respondent to give the fictional breaks to the petitioner amounts to unfair labour practice so as to deprive her from a permanent status. Instructions were issued by Principal Secretary (I&PH) to the Government of Himachal Pradesh as per letter dated 27th March, 2006 regarding continuation of daily waged services without breaks in respect of daily waged labourer who had been engaged by the department for 15, 18 & 20 days in a month. Work and funds were available with the department. At the time of giving artificial/fictional breaks, principle of 'last come first go' was not followed by the respondent. Persons junior to her had worked with the respondent/department without any breaks. The period of artificial breaks is required to be counted as continuous service for the purpose of regularization of petitioner's service. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“(i) That the Hon'ble Court may kindly be set aside the illegal verbal termination from time to time *i.e.* July 1997 to November 2016 and directed to respondent to grant the seniority to the petitioner, in continuity of service, with back wages for the break period with all other consequential service benefits.

(ii) The Hon'ble Court further directed to respondent to regularize the services of petitioner on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

(iii) The Hon'ble Court may kindly be directed to respondent to pay Rs.15,000/- to the petitioner as litigation cost as well as counsel fee.

(iv) Any other relief if the Hon'ble Court deemed fit may kindly be granted in the favour of petitioner in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable.

On merits, it has been admitted that the services of the petitioner were engaged as a daily waged beldar on muster roll basis in the month of July 1997. However, it has been pleaded that the petitioner had worked intermittently, as per availability of works and funds. It was specifically denied that the respondent had not allowed the petitioner to complete 160 days in any calendar year. It was also denied that the respondent had given fictional breaks to the petitioner. It was asserted that the petitioner had been engaged in tribal area of Spiti Sub-Division of Lahaul & Spiti district which remains snow bound for six months in a year. The working season in that area generally spans from April to November. Work was accordingly provided to the daily waged workmen under the respondent on opening of the season in every year. The workers engaged in Spiti-Division in Lahaul & Spiti district are required to complete 180 days in complete year. The workmen Smt. Chhering Dolma was not a similarly situated workman as she was engaged in the Kaza Sub Division, whereas the petitioner was engaged in Tabo Sub-Division. It was denied that S/Shri Tashi Tandup, Thuktan Zangpo and Dorje Zangpo had been working with the petitioner. It was claimed that S/Shri Tashi Tandup and Dorje Zangpo were senior to the petitioner, while Shri Thuktan Zangpo had been engaged in the same month as that of petitioner *i.e.* July 1997. All these workers were engaged in Kaza Sub-Division to manage the water supply, being available throughout the year. The petitioner was engaged at Tabo Sub-Division for seasonal work in Flow Irrigation Scheme, where the work depended upon the season, as no work could be done during the period of snowfall. It was further asserted that S/Smt. Chhering Dolma, Chhering Butich, Padma Dolker and Padma Youdon were engaged in Kaza Sub-Division. The petitioner had not completed 180 days in any calendar year and had not fulfilled the conditions of continuous service as provided under Section 25-B of the Act. No fictional breaks had ever been given to the petitioner and no junior had been engaged by the respondent. No provisions of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prayed that the petition in had be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 31-8-2017:

- (1) Whether time to time termination of services of the petitioner by the respondent during the years, 1997 to 2011 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
Relief

6. Thereafter, parties to the list were directed to adduce evidence in support of the issues

so framed. The petitioner, namely, Smt. Parveen appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 27-3-2006 Ex. PW1/B, copy of Award dated 30-9-2015 Ex. PW1/C, copy of mandays chart of three employees Ex. PW1/D. The respondent examined one Shri Ashok Kumar, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart from 1997 to 2017 Ex. RW1/B, copy of mandays chart from 1997 to July 2018 Ex. RW1/C, copy of mandays chart of Shri Dorje Zangpo Ex. RW1/D, copies of mandays chart of S/Sh. Tashi Tandup and Thuktan Zangpo Ex. RW1/E and Ex. RW1/F & copy of muster-roll of WSS Ex. RW1/G1 to G3.

7. Arguments of the learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Relief.	: Claim petition is partly allowed per operative part of the

award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Parveen (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she is presently working with the respondent/department. She also admitted that the criteria for Spiti Valley is 180 days in a year. Volunteered that, she had not been given work for 180 days. She admitted that S/Shri Tashi Tandup, Thuktan and Dorje Zangpo had not worked with her. Self stated that they had been working in Kaza Sub-Division. She also admitted that all the abovenamed persons were engaged in water supply work. She was also categorical that water supply work is there throughout the year. Volunteered that, she had also been doing the water supply work. She specifically denied that she had been working intermittently and that the department had never given her any fictional breaks.

11. Ex. PW1/B is the copy of letter dated 27th March, 2006. It reveals that all the Executive Engineers of I&PH Department in Himachal Pradesh were instructed that the labourers who have been engaged for 15, 18 & 20 days in a month should henceforth be engaged for the full month basis.

12. Ex. PW1/C is the copy of Award dated 30-9-2015 passed in Reference No. 337/2014 by this Court.

13. Ex. PW1/D is the copy of year-wise working days relating to Shri Tashi Tandup & Ors.

14. Conversely, Shri Ashok Kumar, Executive Engineer, I&PH Division Kaza (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was engaged in the year 1997, though volunteered that she was engaged in the month of July 1997. He denied that the department had given fictional breaks to the petitioner. He admitted that no appointment letter had been issued to the petitioner. Volunteered that, the daily wagers are not issued any such appointment letter. The work of water supply continues throughout year. He admitted that Dorje Zangpo had been also been working with the petitioner. Self stated that he was engaged in the work of water supply. He denied that the names of Dorje Zangpo, Tashi Tandup and Thuktan Zangpo were reflected in Ex. PW1/D, but they were not engaged in the supply of water. He was categorical that the information dated 6-2-2017 Ex. RX1 had been issued by the department. Tabo and Kaza Sub-Divisions are under him. He clearly admitted that the seniority list Ex. RX1, which has been prepared by the department, pertains to water supply scheme and irrigation scheme. He admitted his signature on information dated 20-10-2018, Ex. RX2. He feigned ignorance that Smt. Padma Chhodan and the petitioner were in the irrigation scheme. He admitted Ex. RX3 to be the mandays chart of Smt. Padma Chhodan and Ex. RX4 to be her order of regularization. He denied that they had violated the notification issued by the State Government in the year 2006. He categorical denied that despite availability of work and funds, fictional breaks were given to the petitioner.

15. Ex. RW1/B is the copy of list of mandays chart of the petitioner in respect of I&PH Sub-Division Tabo.

16. Ex. RW1/C is the copy of mandays chart relating to the petitioner which corresponds to the Ex. RW1/B.

17. Ex. RW1/D to Ex. RW1/F are the copies of mandays chart relating to S/Shri Dorje Zangpo, Tashi Tandup and Thuktan Zangpo, respectively.

18. Ex. RW1/G1 to Ex. RW1/G3 are the copies of muster-roll no. IDK-45 regarding various WSS under I&PH Sub-Division at Kaza.

19. Ex. RX/1 is the copy of letter dated 6-10-2017 regarding information under RTI Act, 2005.

20. Ex. RX/2 is the copy of letter dated 20-10-2018 regarding information under RTI Act.

21. Ex. RX/3 is the copy of mandays chart of Smt. Padma Chhodan.

22. Ex. RX/4 is the copy of office order dated 22-1-2018 issued by the respondent. It reveals that Smt. Padma Chhodan was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

23. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster-roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of July 1997 by the respondent.

24. The mandays chart Ex. RW1/B (also Ex. RW1/C) clarifies that from the date of her initial engagement to November 2016 work for the month was not provided to the petitioner by the respondent. The muster-rolls generally for 10-25 days in a month were issued in the name of the petitioner. It is claimed by the respondent that since Spiti Sub-Division is snow bound for six

months, therefore, work is not provided after November to April. However, no such government order has been produced to show that the daily wagers could not be kept after November till April. Further, the respondent could not clarify the position with regard to the mandays charts Ex. RW1/D to RW1/F, whereby some other daily waged workers were provided the work even to the extent of 366 days. The three daily wagers shown in Ex. RW1/D to Ex. RW1/F have been provided the work for more than 300 days in some years. If the daily waged workers could not be provided the work after November till April of the year, then it was for the department to explain as to under what circumstances certain daily wagers shown in Ex. RW1/D to Ex. RW1/F, were provided the work for 365 and 366 days. It was also the plea taken by the respondent that due to non-availability of budget and work, the services of the petitioner could not be engaged on full month basis. This cannot be accepted. Why a person junior to her (whose named figures in mandays chart Ex. RX/4) was provided the work for 200 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that it is a case of sheer discrimination, whereby one set of workmen have been provided the work throughout the year and some workmen had not been provided even 180 days of work in 12 calendar months. Because, in the tribal area of Lahaul and Spiti, for counting the continuous service, the workman has to work for 180 days in 12 calendar months. It only goes to show that the respondent had resorted to favouritism or had acted in a partisan manner with one set of workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State.

25. Faced with the situation, it was contended by the learned District Attorney for the respondent that the petitioner had been working intermittently, so she could not complete 180 days in 12 calendar months. However, his such argument is in air. No grain of evidence has been led by the respondent to show that any notice was given to the petitioner, when she did not turn up for work. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Therefore, it cannot be said that the petitioner herself remained absent from duty, so that she could not complete 180 days of continuous service as per the provisions of Section 25-B of the Act.

26. The action of the respondent in not issuing intentionally the muster-roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice, particularly when *vide* letter dated 27th March, 2006 of Under Secretary (I&PH) to the Government of Himachal Pradesh, all the Executive Engineers had been asked to engage the labourers in I&PH Department for full month basis. Therefore, the fictional breaks given to the petitioner, as shown in the mandays chart, appear to be illegal and the petitioner shall be deemed to be in continuous and uninterrupted service of the respondent as a daily waged worker from the date of her initial engagement to the year 2011, as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the petitioner. Since, as per the record, a junior workman, namely, Smt. Padma Chhodan had been made regular, therefore, the petitioner is also entitled for regularization as per the government policy applicable to the daily waged workmen by the department.

27. In the petition, the petitioner has no where pleaded that during the break period, she was without any work. While testifying in the Court as PW1, the petitioner categorical by admitted that she is still working with the department. Therefore, there is no question of payment of back wages and accordingly the petitioner is held to be not entitled to the wages for break period.

28. These issue are decided in favour of the petitioner and against the respondent.

Issue No. 3:

29. It is not shown by the respondent as to why the petition is not maintainable in this

form. No infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate government and the petitioner has only to file the statement of claim under the Act. This Court does not find any infirmity in the form of the claim. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Relief :

30. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2011 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement, *except back wages*. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to regularization from the date/month of the regularization of the services of her junior(s). In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	74/2018
Date of Institution	:	23-7-2018
Date of Decision	:	26-02-2019

Shri Shivender Kumar s/o Shri Sansar Chand, r/o Village Gummi, P.O. Jhandour, Tehsil Jaswan, District Kangra, H.P. *..Petitioner.*

Versus

The Managing Director, M/s Horizon Polymers, Plot No.192, 212 to 219, Phase-III Industrial Area, Sansarpur Terrace, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vishal Awasthi, Adv.
For the Respondent : Respondent already *exparte*.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Sh. Shivender Kumar s/o Sh. Sansar Chand, Village Gummi, P.O. Jhandour, Tehsil Jaswan, Distt. Kangra, H.P. from 3rd February, 2017 by The Managing Director, M/s Horizon Polymers, Plot No. 192 to 195, 212 to 219, Phase-III Industrial Area, Sansarpur Terrace, Distt. Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for filing of the statement of claim on behalf of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*. If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*. If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services from 3rd February, 2017 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of February, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 433/2016
Date of Institution : 19-8-2016
Date of Decision : 26-02-2019

Smt. Man Dei d/o Shri Sarwan, r/o V.P.O. Sach Pangi, Tehsil Pangi, District Chamba, H.P.
....Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar (Pangi), District Chamba, H.P.
...Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
 For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of between Smt. Man Dei d/o Shri Sarwan, r/o V.P.O. Sach Pangi, Tehsil Pangi, District Chamba, H.P. during year 2005 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi), District Chamba, H.P, without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated 31-12-2011 after lapse of more than 6 years. If not, keeping in view delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster-roll basis in the year 1997. She continuously worked with intermittent breaks upto October 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Jai Dass, Tek Chand, Sucheta Ram, Mohan Lal, Hari Nath, Janam Singh, Smt. Jamna, S/Shri Raj Kumar, Man Singh, Smt. Sarita Devi, Smt. Chhin Dei, Smt. Bhag Dei, Smt. Sur Dei, Smt. Shyami, S/Shri Chunku Ram, Budhi Ram, Smt. Ram Dei, S/Shri Sham Lal, Dev Raj, Gautam Singh and Bameshwar. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and who had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial nos. 1 to 19, 21 & 23 in para no. 4 of the claim petition were appointed as per order of the Labour Court and at serial nos. 20 & 22 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1996, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2011, *i.e.* after about 15 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 04-10-2017:

- (1) Whether termination of services of the petitioner by the respondent during year 2005 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the list were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Man Dei appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copies of mandays chart Ex. PW1/B to Ex. PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and District

Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump-sum compensation of `10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Man Dei (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had only worked for 47 days in the year 1996 with the respondent/department. Volunteered that, she had worked from the year, 1996 upto the year 2005. She categorically denied that from October 1996, upto October 2005, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in the year 1996 and thereafter had never returned to work. She denied that in the tribal area of Pangi the work is done only from the month of April upto the month of October, as thereafter the area remains snowbound. She also denied that she had never marked her presence with the department during the working months. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

12. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.

13. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.

14. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

15. Exts. PW1/F to I are the copies of seniority list in respect of Shri Sucheta Ram and others.

16. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.

17. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the muster-roll pertaining to the petitioner has not been annexed with the reply. Volunteered that, it can be produced on the directions of the Court. He also admitted that as per the record when the petitioner had left the work, no notice of any sort was issued to her. He also clearly admitted that no departmental proceedings were initiated against the petitioner. He further admitted that as per the record, the petitioner had never been again called for work. Volunteered that, she had left the job of her own. He also admitted that Ex. PW1/B to Ex. PW1/L were issued by their office. He was categorical that junior persons, who had continuously worked, have been regularized. Volunteered that, only those persons have been regularized who were engaged as per the Court orders.

18. Ex. RW1/B is the mandays chart relating to the petitioner.

19. Ex. RW1/C is the mandays chart relating to the co-workers.

20. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1997 and she had worked as such till October 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1996 and she had worked intermittently and had left the job of her own. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the year, 1996 and had worked only for 47 days with the respondent/department but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal reveals that the services of the petitioner were engaged in the month July 1996 for the first time as daily waged beldar and she had only worked for 47 days. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1997 and that she had worked as such upto October 2005, as claimed.

21. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 47 days in the year 1996. This document further shows that from the years 1997 to 2000, the petitioner had not worked for a single day. Thus, in her total service in the months of July and September 1996, she had only worked for 47 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 1996 the petitioner had only worked for 47 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

22. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on

the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

23. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Karam Dev and Shri Raj Kumar were engaged in the year 1996, those of S/Shri Hukkam Chand, Suraj Ram, Ludder Singh, Mohinder Singh, Hari Nath, Janam Singh, Smt. Jamna, Man Singh, Smt. Sarita Devi and Hari Ram were engaged in the year 1997, those of Shri Jai Dass and Mohan Lal in the year 1998, those of Shri Tek Chand and Smt. Chhin Dei were engaged in the year 1999, while those of Smt. Bhag Dei, Smt. Sur Dei, Smt. Shyami and Shri Chunku in the year 2000, those of Shri Sucheta Ram in the year 2001, while those of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Sham Lal and Shri Gautam Singh mentioned at serial Nos. 26 & 27, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is July 1996. There is nothing on record to show that the persons figuring at serial nos. 1 to 22 and 24 were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

25. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

26. While testifying in the Court as PW1, the petitioner has given her age as 34 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

27. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was

considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (*See Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC). . . .”

28. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

29. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under section 10(1) of the Act, *vide* Notification No.11-5/99(Lab.)ID/2016/Chamba, dated 30th May, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

30. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for two months and actually worked for 47 days as per mandays chart on record and that the services of petitioner were disengaged in September 1996, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about ***six years*** *i.e.* demand notice was given on 31-12-2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 34 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

31. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3 :

32. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

33. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 441/2016
Date of Institution : 19-8-2016
Date of Decision : 27-02-2019

Shri Mangal Chand s/o Shri Chet Ram, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Killar Division, (Pangi), District Chamba, H.P. *....Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :Sh. I.S. Jaryal, AR
 For the Respondent :Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Mangal Chand s/o Shri Chet Ram, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P., during year 2005 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 02-09-2013 after lapse of more than 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster-roll basis in the year, 1994. He continuously worked with intermittent breaks upto the year 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Hukkam Chand, Suraj Ram, Ludder Singh, Karam Dev, Mohinder Kumar, Jai Dass, Tek Chand, Sucheta Ram, Mohan Lal, Hari Nath, Janam Singh, Smt. Jamna, S/Shri Raj Kumar and Man Singh, S/Smt. Sarita Devi, Chhin Dei, Bhag Dei, Sur Dei, Shaymi, S/Shri Chunku Ram, Budhi Ram, Hari Ram, Budhi Ram, Smt. Ram Dei, S/Shri Sham Lal, Dev Raj, Gautam Singh and Bameshwar. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the

averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

On merits, it has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1994 and that he had continuously worked with intermittent breaks upto the year 2005. It was asserted that the petitioner had never been engaged by the respondent to do any work.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 23-5-2018:—

- (1) Whether termination of the services of petitioner by the respondent during year, 2005 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of the petitioner? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Mangal Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copies of mandays chart of juniors Ex. PW1/B to Ex. PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Counsel/Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common

appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Mangal Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had never worked as a daily waged beldar with the department from the year 1994 upto the year 2005. Volunteered that, he had worked from the year 1994 upto the year 2005. He denied that he never came to work. He admitted that he works as an agriculturist and these days is earning his livelihood by doing agricultural chores. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

13. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.

14. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.

15. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

16. Exts. PW1/F to I are the copies of seniority list with respect to Shri Sucheta Ram and others.

17. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.

18. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

19. In the cross-examination, he admitted that the muster rolls of the petitioner have not been annexed with the reply. Volunteered that, they can be produced on the directions of the Court. He was categorical that as per the record when the petitioner had left the work, no notice was given to him. He also admitted that no departmental proceedings were initiated against him. He also clearly admitted that as per the record the petitioner had never been called for work again. He further admitted that generally the work remains stalled from November till April. Self stated that, as per the requirement during these months also muster rolls of the labourers are issued. He admitted Ex. PW1/B to Ex. PW1/L to have been issued by their office.

20. Ex. RW1/B is the mandays chart relating to the petitioner.

21. Ex. RW1/C is the mandays chart relating to other workers.

22. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1994 and he had worked as such till the year 2005. It was the stand taken by the respondent that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a

daily waged beldar in the year 1994 by the respondent and that he had not worked as such upto the year 2005 but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal reveals that the petitioner had never worked with the respondent even for a single day from the year 1994 upto the year 2005. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the month in which he was engaged by the respondent. There is also no pleading or evidence to the effect as to in which specific month his services stood terminated by the respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. No other witness was examined by the petitioner from HPPWD, Division, Killar, who had seen him working as a daily waged beldar with the respondent. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those 11 years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1994 upto the year 2005. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondent during the pendency of this case. Further, the petitioner himself claims that he had been engaged as a daily waged beldar on muster roll basis. He could have proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondent, has been placed on record by him.

23. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondent.

24. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondent can also not be held to have violated the provisions of Sections 25-G and 25-H of the Act, as the relationship of the petitioner and the respondent being that of a workman and employer stands not established on record.

25. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

26. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

27. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman

under the respondent for the alleged period. Hence, this issue becomes redundant.

Relief :

28. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ` 5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of February, 2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA ,AT DHARAMSHALA (H.P.)

Ref No. : 199/2017
Date of Institution : 10-10-2017
Date of Decision : 28-02-2019

Ms. Sonia Pathania d/o Shri Lal Singh Pathania, r/o Village Nali, P.O. Banet, Tehsil Bhatiyat, District Chamba, H.P. *..Petitioner.*

Versus

Employer/Managing Director, M/s Sunshine Hydro Power Limited, Village Nali, P.O. Baneth, Tehsil Bhatiyat, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dinesh Kumar, Adv.
For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Ms. Sonia Pathania d/o Shri Lal Singh Pathania, r/o Village Bali, P.O. Banet, Tehsil Bhatiyat, District Chamba, H.P. during March, 2016 by the Employer/Managing Director, M/s Sunshine Hydro Power Limited, Village Nali, P.O. Baneth, Tehsil Bhatiyat, District Chamba, H.P., without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above management/employer?”

2. The case of the petitioner as set out in the statement of claim is that her services were engaged as a Clerk/Computer Operator by the respondent on 12th September, 2012 without any appointment letter as well as identity card. She was paid the wages @ Rs. 3,500/- per month, subsequently was enhanced to Rs. 4,000/- per month. It is alleged that the father of petitioner had provided land to the respondent for storage of construction material of their project as such the respondent had not paid any rent or compensation to him so far. She continuously worked as such upto March, 2016 but, however, the salary from the year 2014 to March, 2016 had not been released to her. It is further alleged that the respondent had illegally and arbitrarily terminated the services of the petitioner from the month of March, 2016. She further alleged that no notice or back wages were paid to her by the respondent while terminating her services. Thereafter, the petitioner had made representation to the Deputy Commissioner, Chamba, which was referred to the SDM Chowari and Labour Officer Dalhousie, Chamba for information and necessary action. It is asserted that Labour Officer has called both the parties and tried to resolve the dispute between them, but of no avail. It is alleged that the respondent had indulged in unfair labour practice. It is further alleged that the respondent had terminated the services of the petitioner without any prior notice. Persons junior to her are still continuing in the service of the respondent. It is violative of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the dispute referred to this Hon'ble court/Tribunal may kindly be considered and allowed in favour of the petitioner and the respondent may be directed to reinstate the petitioner in service from the date, she has been terminated from service and to release the arrears of pay to her alongwith interest. The respondent may further be directed to pay the salary of the petitioner from very day of her engagement at the rate of minimum wages as have been prescribed by the State Govt. of H.P. and to release the arrear resulting therefrom alongwith the interest from the date due till the actual date of payment thereof. Any other relief which may be deemed just and appropriate may also be granted to the petitioner alongwith costs of the proceedings in the interest of justice. The respondent may be further directed to pay the rent of the land of the petitioner which is being used for storage of articles by the respondent”.

3. On notice, since the respondent did not appear in the Court despite being served, he was proceeded against *ex parte* on 7-8-2018.

4. The petitioner Ms. Sonia Pathania, stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety, copy of report under Section 12(4) of the I.D. Act, 1947 Ex. PW1/B, copy of complaint dated 23-3-2016 Ex. PW1/C, copy of complaint regarding non-payment of wages Ex. PW1/D & copy of complaint before the Chairman, Pollution Control Board Ex. PW1/E.

5. The depositions made by the PWs 1 and 2 go un-rebutted and unchallenged on the record. They make it crystal clear that the petitioner served the respondent continuously from 12-9-2012 upto March, 2016 and had completed 240 days of work in each and every calendar year of her employment.

6. Section 25 of the Act postulates as under:—

“25-F. **Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

7. There is nothing on the record to show that before the termination of the services of the petitioner by the respondent, the provisions of the above quoted Section were complied with by the latter. Therefore, it can safely be said that the respondent had contravened the provisions of Section 25-F of the Act.

8. In the statement of claim and while testifying in the Court as PW1, the petitioner has failed to disclose the name of any person junior to her, who was retained in service by the respondent at the time of the termination of her services. Not only this, the petitioner has not divulged the name of any person, who was employed by the respondent after the termination in question. That being so, it cannot be said that the respondent had flouted the provisions of Sections 25-G and 25-H of the Act.

9. Taking into consideration the discussions made above, it is held that the termination of the services of the petitioner by the respondent is hit by the provisions of Section 25-F of the Act. The same is illegal and unjustified.

10. Now comes the question as to what relief should be granted to the petitioner.

11. In *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal*, reported in [2013 (139) FLR 125], the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:—

"19. In a subsequent decision in *Balbair Singh*, this Court observed that *Ajaib Singh* was confined to the facts and circumstances of that case. It is true that in *Balbair Singh*, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from *Balbair Singh* where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

12. While testifying in the Court as PW1, the petitioner has given her age as 28 years. It is common knowledge that a young woman like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

13. In the statement of claim and also as per the ocular evidence led on record, the petitioner has claimed that she was not paid her salary by the respondent from the year 2014 upto the year 2016. Since, there is no reference received from the Labour Commissioner on the point of non-payment of salary, this Court is to confine its findings only with regard to the alleged illegal termination.

14. Keeping in view the trite laid down in Mohan Lal's case (cited supra) and the other relevant factors including the mode and manner of appointment, nature of the employment, length of service and no delay in raising the industrial dispute by the petitioner/workman, I feel that she is entitled to the reinstatement of her services and the seniority etc.

15. Such being the situation, the instant claim petition succeeds in part and the same is partly allowed *ex parte*. The termination of the services of the petitioner by the respondent on March, 2016 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination *i.e.* March, 2016 *except back wages*. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 440/2016
Date of Institution : 19-8-2016
Date of Decision : 28-02-2019

Shri Roop Singh s/o Shri Kishan Chand, r/o Village Ghissal, P.O. Sach, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Killar Division, (Pangi), District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent :

Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Roop Singh, s/o Shri Kishan Chand, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P., during year 2005 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 27-08-2012 after lapse of 7 years. If not, keeping in view delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis in the year, 1995. He continuously worked with intermittent breaks upto the year 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Hukkam Chand, Suraj Ram, Ludder Singh, Karam Dev, Mohinder Kumar, Jai Dass, Tek Chand, Sucheta Ram, Mohan Lal, Hari Nath, Janam Singh, Smt. Jamna, S/Shri Raj Kumar and Man Singh, S/Smt. Sarita Devi, Chhin Dei, Bhag Dei, Sur Dei, Shaymi, S/Shri Chunku Ram, Budhi Ram, Hari Ram, Budhi Ram, Smt. Ram Dei, S/Shri Sham Lal, Dev Raj, Gautam Singh and Bameshwar. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

On merits, it has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1995 and that he had continuously worked with intermittent breaks upto the year 2005. It was asserted that the petitioner had never been engaged by the respondent to do any work.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 23-5-2018:—

- (1) Whether termination of the services of petitioner by the respondent during year, 2005 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches on the part of the petitioner? ..*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Roop Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copies of mandays chart of juniors Ex. PW1/B to Ex. PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Counsel/Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Roop Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had never worked as a daily waged beldar with the department from the year 1995 upto the year 2005. Volunteered that, he had worked from the year 1995 upto the year 2005. He denied that he never came to work. He admitted that he works as an agriculturist and these days is earning his livelihood by doing agricultural chores. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

13. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.

14. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.

15. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

16. Exts. PW1/F to I are the copies of seniority list with respect to Shri Sucheta Ram and others.

17. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.

18. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

19. In the cross-examination, he admitted that the muster rolls of the petitioner have not been annexed with the reply. Volunteered that, they can be produced on the directions of the Court. He was categorical that as per the record when the petitioner had left the work, no notice was given to him. He also admitted that no departmental proceedings were initiated against him. He also clearly admitted that as per the record the petitioner had never been called for work again. He further admitted that generally the work remains stalled from November till April. Self stated that, as per the requirement during these months also muster rolls of the labourers are issued. He admitted Ex. PW1/B to Ex. PW1/L to have been issued by their office.

20. Ex. RW1/B is the mandays chart relating to the petitioner.

21. Ex. RW1/C is the mandays chart relating to other workers.

22. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1995 and he had worked as such till the year 2005. It was the stand taken by the respondent that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1995 by the respondent and that he had not worked as such upto the year, 2005 but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal reveals that the petitioner had never worked with the

respondent even for a single day from the year 1995 upto the year 2005. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the month in which he was engaged by the respondent. There is also no pleading or evidence to the effect as to in which specific month his services stood terminated by the respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. No other witness was examined by the petitioner from HPPWD, Division, Killar, who had seen him working as a daily waged beldar with the respondent. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those 11 years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1995 upto the year 2005. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondent during the pendency of this case. Further, the petitioner himself claims that he had been engaged as a daily waged beldar on muster roll basis. He could have proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondent, has been placed on record by him.

23. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondent.

24. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondent can also not be held to have violated the provisions of Sections 25-G and 25-H of the Act, as the relationship of the petitioner and the respondent being that of a workman and employer stands not established on record.

25. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

26. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

27. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondent for the alleged period. Hence, this issue becomes redundant.

Relief:

28. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is,

therefore, dismissed with costs quantified at `5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 160/2014
Date of Institution : 17-4-2014
Date of Decision : 26-02-2019

Shri Monu Kumar s/o Shri Girdhari Lal, r/o Village Chatter, P.O. Andretta, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalya, Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Rahul Gupta, Adv.

ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Monu Kumar, s/o Shri Girdhari Lal, r/o Village Chatter, P.O. Andretta, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/ Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. The case is listed for the cross-examination of the petitioner for today but, however, Shri N.L. Kaundal, learned Authorized Representative for the petitioner has made the below given

“Stated that I do not want to proceed with this case on behalf of the petitioner and withdraw the case on behalf of the petitioner”

4. The reference is answered in the aforesaid terms.

6. File after due completion be consigned to the records.

Announced in the open Court today this 26th day of February, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

वन विभाग

अधिसूचना

शिमला-2, 31 जुलाई, 2019

संख्या एफ0एफ0ई0-बी0-एफ0(14)-56/2019.—भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उप-धारा (3) के अधीन यथा अपेक्षित के अनुसार इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट वन भूमि या बंजर भूमि में या उस पर सरकार तथा प्राइवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें अभिलिखित कर लिया गया है:

और उक्त अनुसूची में दर्शित वन भूमि या बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय-4 के उपबन्ध उक्त वन भूमि या बंजर भूमि को लागू होंगे और जो इसके पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (2) के उपबन्धों के अधीन "संरक्षित वन" कहलाएगी।

अनुसूची

क्र० सं०	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन मे परिवर्तित किया जाना अपेक्षित है	महाल का नाम	खसरा नम्बर	हैक्टेयर में क्षेत्रफल	मुख्य सीमाएं महाल/उप-महाल	वन परिक्षेत्र	वन मण्डल	जिला
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1.	5/2015	क्वारा-प्रथम	क्वारा	1271, 1274 किता.. 2	6-57-11	उत्तर:-क्वारा दक्षिण:-डमैची एवं क्वारा। पूर्व:-क्वारा पश्चिम:-क्वारा	मशोबरा	शिमला	शिमला
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आदेश द्वारा,
राम सुभग सिंह,
अतिरिक्त मुख्य सचिव (वन)।

[Authoritative English text of this Department Notification No. FFE-B-F-(14)-56/2019, dated 31st July, 2019 as required under Article 348(3) of the Constitution of India].

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, the 31st July, 2019

No. FFE-B-F-(14)-56/2019.—WHEREAS the nature and extent of the rights of the Government and of the Private Persons in or over the forest land or waste land specified in the SCHEDULE appended to this Notification have been enquired into and recorded, as required under sub-section (3) of section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

AND WHEREAS the forest land or waste land shown in the said SCHEDULE is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the forest produce therein;

NOW THEREFORE in exercise of the powers conferred by sub-section (1) of section-29 of the Act *ibid*, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the said Act shall apply to the said forest land or waste land and shall hereafter be called as “protected forests” under the provisions of sub-section (2) of section-29 of the Act *ibid*.

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal	Khasra number(s)	Area in hectare(s)	Cardinal Boundaries Muhal/ Up-Muhal	Forest Range	Forest Division	District
1.	5/2015	Kawara-I	Kawara	1271, 1274 Kitta ..2	6-57-11	North:- Kawara South:- Damechi, Kawara. East:- Kawara West:- Kawara	Mashobra	Shimla	Shimla

By order,

RAM SUBHAG SINGH,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला-2, 31 जुलाई, 2019

संख्या एफ0एफ0ई0-बी0-एफ0(14)-57/2019.—भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उप-धारा (3) के अधीन यथा अपेक्षित के अनुसार, इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट वन भूमि या बंजर भूमि में या उस पर सरकार तथा प्राइवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें अभिलिखित कर लिया गया है;

और उक्त अनुसूची में दर्शित वन भूमि या बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय-4 के उपबन्ध उक्त वन भूमि या बंजर भूमि को लागू होंगे और जो इसके पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (2) के उपबन्धों के अधीन “संरक्षित वन” कहलाएगी।

अनुसूची

क्र० सं०	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	महाल का नाम	खसरा नम्बर	हैक्टेयर में क्षेत्रफल	मुख्य सीमाएं महाल/उप-महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	6/2015	चैली चौला	चैली चौला	24, 30, 34, 120, 130 कित्ता.. 5	12-42-30	उत्तर:-चैली चौला दक्षिण:-सरघीन पूर्व:-चैली चौला पश्चिम:-चैली चौला	मशोबरा	शिमला	शिमला

आदेश द्वारा,

राम सुभग सिंह,
अतिरिक्त मुख्य सचिव (वन)।

[Authoritative English text of this Department Notification No. FFE-B-F-(14)-57/2019, dated 31st July, 2019 as required under Article 348(3) of the Constitution of India].

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, the 31st July, 2019

No. FFE-B-F-(14)-57/2019.—WHEREAS the nature and extent of the rights of the

Government and of the Private Persons in or over the forest land or waste land specified in the SCHEDULE appended to this Notification have been enquired into and recorded, as required under sub-section (3) of section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

AND WHEREAS the forest land or waste land shown in the said SCHEDULE is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the forest produce therein;

NOW THEREFORE in exercise of the powers conferred by sub-section (1) of section-29 of the Act *ibid*, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the said Act shall apply to the said forest land or waste land and shall hereafter be called as “protected forests” under the provisions of sub-section (2) of section-29 of the Act *ibid*

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal	Khasra number (s)	Area in hectare (s)	Cardinal Boundaries Muhal/ Up-Muhal	Forest Range	Forest Division	District
1.	6/2015	Chaili-Chola	Chaili-Chola	24, 30, 34, 120, 130, Kitta.. 5	12-42-30	North:- Chaili-Chola. South:- Sargheen East:- Chaili Chola West:- Chaili-Chola	Mashobra	Shimla	Shimla

By order,

RAM SUBHAG SINGH,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला-2, 31 जुलाई, 2019

संख्या एफ0एफ0ई0-बी0-एफ0(14)-58/2019.—भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उप-धारा (3) के अधीन यथा अपेक्षित के अनुसार इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट वन भूमि या बंजर भूमि में या उस पर सरकार तथा प्राइवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें अभिलिखित कर लिया गया है;

और उक्त अनुसूची में दर्शित वन भूमि या बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा-29 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय-4 के उपबन्ध उक्त वन भूमि या बंजर भूमि को लागू होंगे और जो इसमें इसके पश्चात् पूर्वोक्त अधिनियम की धारा-29 की उप-धारा (2) के उपबन्धों के अधीन “संरक्षित वन” कहलाएगी।

अनुसूची

क्र० सं०	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	मुहाल का नाम	खसरा नम्बर	हैक्टेयर में क्षेत्रफल	मुख्य सीमाएं मुहाल/उप मुहाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	7/2015	बनाड़ी-प्रथम	बनाड़ी	239, 241, 243, 295, 296, 298,	13-16-91	उत्तर:- महाल मशोबरा, महाल हजा, महाल चड़ोली।	मशोबरा	शिमला	शिमला

				299, 301, 332 / 1, 422, 425 / 1 किता.. 11		दक्षिण:-सीमा महाल बनाड़ी पूर्व:-महाल चड़ोली, महाल हजा, महाल चड़ाऊ। पश्चिम:-महाल बनाड़ी, महाल हजा, महाल भरोब ।			
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आदेश द्वारा,

राम सुभग सिंह,
अतिरिक्त मुख्य सचिव (वन)।

[Authoritative English text of this Department Notification No. FFE-B-F-(14)-58/2019, dated 31st July, 2019 as required under Article 348(3) of the Constitution of India].

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, the 31st July, 2019

No. FFE-B-F-(14)-58/2019.—WHEREAS the nature and extent of the rights of the Government and of the Private Persons in or over the forest land or waste land specified in the SCHEDULE appended to this Notification have been enquired into and recorded, as required under sub-section (3) of section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

AND WHEREAS the forest land or waste land shown in the said SCHEDULE is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the forest produce therein;

NOW THEREFORE in exercise of the powers conferred by sub-section (1) of section-29 of the Act *ibid*, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the said Act shall apply to the said forest land or waste land and shall hereafter be called as “protected forests” under the provisions of sub-section (2) of section-29 of the Act *ibid*.

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal	Khasra number (s)	Area in hectare (s)	Cardinal Boundaries Muhal/ Up-Muhal	Forest Range	Forest Division	District
1.	7/2015	Banari-I	Banari	239, 241, 243, 295, 296, 298, 299, 301, 332/1, 422, 425/1 Kitta ..11	13-16-91	North:- Muhal Mashobra, Muhal Haza, Muhal Chadoli. South:- Boundary Muhal Banadi. East:- Muhal Chadoli, Muhal Haza, Muhal Chadaoo.	Mashobra	Shimla	Shimla

						West:-Muhali Banadi, Muhali Haza, Muhali Bharob.			
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By order,

RAM SUBHAG SINGH,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला-2, 31 जुलाई, 2019

संख्या एफ0एफ0ई0-बी0-एफ0(14)-59/2019.—भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उप-धारा (3) के अधीन यथा अपेक्षित के अनुसार इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट वन भूमि या बंजर भूमि में या उस पर सरकार तथा प्राइवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें अभिलिखित कर लिया गया है;

और उक्त अनुसूची में दर्शित वन भूमि या बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय-4 के उपबन्ध उक्त वन भूमि या बंजर भूमि को लागू होंगे और जो इसके पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (2) के उपबन्धों के अधीन "संरक्षित वन" कहलाएगी।

अनुसूची

क्र० सं०	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	महाल का नाम	खसरा नम्बर	हैक्टेयर में क्षेत्रफल	मुख्य सीमाएं महाल/उप-महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	8/2015	बनाड़ी-द्वितीय	बनाड़ी	737/1, 740, 746/1, 760/1, 763/1, 776/1, 777/1 किता.. 7	19-99-10	उत्तर:-बनाड़ी दक्षिण:-सीमा महाल कोट, महाल हजा, महाल बनाड़ी। पूर्व:-भाड़ पश्चिम:-बनाड़ी	मशोबरा	शिमला	शिमला

आदेश द्वारा,

राम सुभग सिंह,
अतिरिक्त मुख्य सचिव (वन)।

[Authoritative English text of this Department Notification No. FFE-B-F-(14)-59/2019, dated 31st July, 2019 as required under Article 348(3) of the Constitution of India].

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, the 31st July, 2019

No. FFE-B-F-(14)-59/2019.—WHEREAS the nature and extent of the rights of the

Government and of the Private Persons in or over the forest land or waste land specified in the SCHEDULE appended to this Notification have been enquired into and recorded, as required under sub-section (3) of section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

AND WHEREAS the forest land or waste land shown in the said SCHEDULE is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the forest produce therein;

NOW THEREFORE in exercise of the powers conferred by sub-section (1) of section-29 of the Act *ibid*, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the said Act shall apply to the said forest land or waste land and shall hereafter be called as “protected forests” under the provisions of sub-section (2) of section-29 of the Act *ibid*.

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal	Khasra number (s)	Area in hectare (s)	Cardinal Boundaries Muhal/ Up-Muhal	Forest Range	Forest Division	District
1.	8/2015	Banadi-II	Banadi	737/1, 740, 746/1, 760/1, 763/1, 776/1, 777/1 Kitta.. 7	19-99-10	North:- Banadi South:- Boundary Muhal Kot, Muhal Haza, Muhal Banadi East:- Bhad West:- Banari.	Mashobra	Shimla	Shimla

By order,

RAM SUBHAG SINGH,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला-2, 31 जुलाई, 2019

संख्या एफ0एफ0ई0-बी0-एफ0(14)-60/2019.—भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उप-धारा (3) के अधीन यथा अपेक्षित के अनुसार इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट वन भूमि या बंजर भूमि में या उस पर सरकार तथा प्राइवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें अभिलिखित कर लिया गया है;

और उक्त अनुसूची में दर्शित वन भूमि या बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय-4 के उपबन्ध उक्त वन भूमि या बंजर भूमि को लागू होंगे और जो इसके पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उप-धारा (2) के उपबन्धों के अधीन “संरक्षित वन” कहलाएगी।

अनुसूची

क्र० सं०	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	महाल का नाम	खसरा नम्बर	हेक्टेयर में क्षेत्रफल	मुख्य सीमाएं महाल/उप-महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	9/2015	बड़ाह-प्रथम	बड़ाह	7	8-24-17	उत्तर:-बड़ाह दक्षिण:-बड़ाह पूर्व:-बड़ाह पश्चिम:-छकडैहल	मशोबरा	शिमला	शिमला

आदेश द्वारा,

राम सुभग सिंह,
अतिरिक्त मुख्य सचिव (वन)।

[Authoritative English text of this Department Notification No. FFE-B-F-(14)-60/2019, dated 31st July, 2019 as required under Article 348(3) of the Constitution of India].

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, the 31st July, 2019

No. FFE-B-F-(14)-60/2019.—WHEREAS the nature and extent of the rights of the Government and of the Private Persons in or over the forest land or waste land specified in the SCHEDULE appended to this Notification have been enquired into and recorded, as required under sub-section (3) of section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

AND WHEREAS the forest land or waste land shown in the said SCHEDULE is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the forest produce therein;

NOW THEREFORE in exercise of the powers conferred by sub-section (1) of section 29 of the Act *ibid*, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the said Act shall apply to the said forest land or waste land and shall hereafter be called as “protected forests” under the provisions of sub-section (2) of section-29 of the Act *ibid*.

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal	Khasra number (s)	Area in hectare (s)	Cardinal Boundaries Muhal/ Up Muhal	Forest Range	Forest Division	District
1.	9/2015	Badah-I	Badah	7	8-24-17	North:- Badah South:- Badah	Mashobra	Shimla	Shimla

						East:-Badah			
						West:- Chhakdaihal			

By order,

RAM SUBHAG SINGH,
Additional Chief Secretary (Forests).

ब अदालत तहसीलदार व अख्यारात सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0

Sh. Lobsang Thupten s/o Mr. Monlam Gyatso & Late Mrs. Lhamo Tso, r/o New House
near Men-Tsee Khang, P.O. Dharamshala, Tehsil Dharamshala, Distt. Kangra (H.P.).

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

Sh. Lobsang Thupten s/o Mr. Monlam Gyatso & Late Mrs. Lhamo Tso ने इस अदालत में शपथ—पत्र सहित मुकद्दमा दायर किया है कि उसकी स्वयं (Lobsang Thupten) की जन्म तिथि 18-11-1981 है परन्तु एम0सी0 Dharamshala में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Lobsang Thupten s/o Mr. Monlam Gyatso & Late Mrs. Lhamo Tso की जन्म तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 23-09-2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 28-08-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा, हि0 प्र0।

ब अदालत तहसीलदार व अख्यारात सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0

मुकद्दमा नं0 : 61

Dolma Lhazom d/o Mr. Urgyen, r/o Tipa Road Mcleodganj, P.O. Mcleodganj, Tehsil
Dharamshala, Distt. Kangra (H.P.)

बनाम

आम जनता

विषय.—प्रार्थना-पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

Dolma Lhazom d/o Mr. Urgyen ने इस अदालत में शपथ-पत्र सहित मुकद्दमा दायर किया है कि उसकी स्वयं (Sh. Dolma Lhazom d/o Mr. Urgyen) की जन्म तिथि 10-09-1973 है परन्तु एम0सी0 Dharamshala में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Dolma Lhazom d/o Mr. Urgyen की जन्म तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 13-09-2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ-पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 27-08-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा, हि0 प्र0।

ब अदालत श्री सुशील कुमार, नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
इन्दौरा, जिला कांगड़ा, हि0 प्र0

तारीख पेशी : 29-09-2019

श्री अश्वनी कुमार

प्रार्थी।

बनाम

आम जनता

विषय.—प्रार्थना-पत्र जेरे नियम 8(4) हिमाचल प्रदेश विवाह पंजीकरण अधिनियम, 1996.

प्रार्थी श्री अश्वनी कुमार पुत्र श्री देस राज, निवासी गांव पनियाला, डाकघर घंडरा, तहसील इन्दौरा, जिला कांगड़ा, हि0 प्र0 ने प्रार्थना-पत्र प्रस्तुत करते हुए निवेदन किया है कि उसका विवाह दर्ज न हुआ है। जिसे वह ग्राम पंचायत मलाहड़ी के पंचायत रिकार्ड में दर्ज करवाना चाहता है।

अतः इस इशतहार राजपत्र के द्वारा सर्वसाधारण को सूचित किया जाता है कि उक्त विवाह दर्ज करवाने बारे किसी भी व्यक्ति को कोई एतराज हो तो वह असालतन या वकालतन दिनांक 29-09-2019 को प्रातः 10.00 बजे अदालत हजा में उपस्थित होकर अपना एतराज पेश कर सकता है। कोई एतराज पेश न होने की सूरत में ग्राम पंचायत मलाहड़ी के रिकार्ड में विवाह दर्ज करने बारे आदेश पारित कर दिए जाएंगे।

आज दिनांक 23-08-2019 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी किया गया।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
इन्दौरा, जिला कांगड़ा, हि0 प्र0।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार कुल्लू,
जिला कुल्लू, हि0 प्र0**

केस नं0 : 11/CT/2019

केस दायर : 18-06-2019

श्रीमती देवकी देवी उर्फ रीना शर्मा पत्नी श्री गुलशन कुमार, निवासी सजला, डा0 करजां, तहसील व जिला कुल्लू, हि0 प्र0

बनाम

आम जनता

विषय.— दरखास्त बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

उपरोक्त विषय पर श्रीमती देवकी देवी उर्फ रीना शर्मा पत्नी श्री गुलशन कुमार, निवासी सजला, डा0 करजां, तहसील व जिला कुल्लू, हि0 प्र0 ने दिनांक 28-02-2019 को अधोहस्ताक्षरी के कार्यालय में नाम दुरुस्ती हेतु प्रार्थना-पत्र दायर किया है, जिसे बाद रिपोर्ट व छानबीन हेतु क्षेत्रीय कानूनगो रायसन को प्रेषित किया था, जिसकी रिपोर्ट कानूनगो रायसन व पटवारी हल्का रायसन से दिनांक 25-04-2019 को प्राप्त हो चुकी है। जिसके अनुसार प्रार्थी का नाम राजस्व रिकार्ड में श्रीमती देवकी देवी पुत्री युवराज उर्फ योगराज दर्ज है, का दुरुस्त नाम देवकी देवी उर्फ रीना है, को सही दर्ज करने बारे प्रार्थना की है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि श्रीमती देवकी देवी पुत्री युवराज उर्फ योगराज का नाम दुरुस्त करने बारे कोई उजर/एतराज हो तो वह अधोहस्ताक्षरी के कार्यालय में इस इशतहार के जारी होने के एक माह के भीतर लिखित रूप में उजर/एतराज दायर करेगा। यदि उक्त समय अवधि तक कोई भी उजर/एतराज दायर नहीं हुआ तो राजस्व रिकार्ड में श्रीमती देवकी देवी उर्फ रीना सही नाम दर्ज करने बारे आदेश जारी किया जाएगा।

आज दिनांक 07-08-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
कुल्लू, जिला कुल्लू, हि0 प्र0।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार कुल्लू,
जिला कुल्लू, हि0 प्र0**

केस नं0 : 12/CT/2019

केस दायर : 04-07-2019

श्री प्यारे चन्द पुत्र श्री तोलू, निवासी गांव खलाड़ा, डा0 भेखली, तहसील व जिला कुल्लू, हि0 प्र0

बनाम

आम जनता

विषय.—दरखास्त बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

उपरोक्त विषय पर श्री प्यारे चन्द पुत्र श्री तोलू निवासी गांव खलाड़ा, डा0 भेखली, तहसील व जिला कुल्लू हि0 प्र0 ने दिनांक 28-02-2019 को अधोहस्ताक्षरी के कार्यालय में नाम दुरुस्ती हेतु प्रार्थना-पत्र दायर किया है। जिसे बाद रिपोर्ट व छानबीन हेतु क्षेत्रीय कानूनगो लगसारी को प्रेषित किया था, जिसकी रिपोर्ट कानूनगो लगसारी व पटवारी हल्का बस्तौरी से दिनांक 19-03-2019 को प्राप्त हो चुकी है। जिसके अनुसार प्रार्थी का नाम राजस्व रिकार्ड में श्री प्यारू पुत्र तोलू दर्ज है, का दुरुस्त नाम प्यारे चन्द पुत्र श्री तोलू है, को सही दर्ज करने बारे प्रार्थना की है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि श्री प्यारे चन्द पुत्र श्री तोलू का नाम दुरुस्त करने बारे कोई उजर/एतराज हो तो वह अधोहस्ताक्षरी के कार्यालय में इस इशतहार के जारी होने के एक माह के भीतर लिखित रूप में उजर/एतराज दायर करेगा। यदि उक्त समय अवधि तक कोई भी उजर/एतराज दायर नहीं हुआ तो राजस्व रिकार्ड में श्री प्यारे चन्द उर्फ प्यारू पुत्र श्री तोलू सही नाम दर्ज करने बारे आदेश जारी किया जाएगा।

आज दिनांक 08-08-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
कुल्लू, जिला कुल्लू, हि0 प्र0।

**In the Court of Shri Neeraj Gupta, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Sh. Jeet Bahadur s/o Shri Dalip Kumar, r/o Hukam Chand Niwas near Sai Bhawan, Sector-IV, New Shimla, Tehsil and District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Sh. Jeet Bahadur s/o Shri Dalip Kumar, r/o Hukam Chand Niwas near Sai Bhawan, Sector-IV, New Shimla, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter the name/date of death of his Father named—Sh. Dalip Kumar s/o Late Sh. Mohan Lal, r/o Hukam Chand Niwas near Sai Bhawan, Sector-IV, New Shimla, Tehsil and District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Municipal Corporation, Tehsil and District Shimla.

Sl. No.	Name of the family member	Relation	Date of death
1.	Sh. Dalip Kumar	Father	19-07-2016

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name/date of death of above named in the record of Municipal Corporation,

Tehsil and District Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 26-07-2019 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Shimla (R), District Shimla, H.P.*

न्यायालय विजय कुमार राय, तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना,
जिला ऊना (हि0 प्र0)

दावा संख्या नं0 :/Teh. Una/M. Reg./2019

हरभजन सिंह पुत्र श्री देव राज, वासी त्यूड़ी, तहसील व जिला ऊना (हि0 प्र0)

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकद्दमा उनवान वाला में हरभजन सिंह पुत्र श्री देव राज, वासी त्यूड़ी, तहसील व जिला ऊना (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 12-09-2010 को सोनू देवी पुत्री श्री गुरमेल चन्द, वासी नानग्रां, तहसील नंगल, जिला रोपड़ (पंजाब) के साथ हुआ है लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार, विवाह पंजीकरण, ग्राम पंचायत त्यूड़ी, तहसील व जिला ऊना (हि0 प्र0) में दर्ज न करवा सका है।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि यदि उपरोक्त वर्णित प्रार्थीगण के विवाह का इन्द्राज स्थानीय रजिस्ट्रार, विवाह पंजीकरण, ग्राम पंचायत त्यूड़ी, तहसील व जिला ऊना (हि0 प्र0) में करवाने बारे किसी को कोई उजर या एतराज हो तो वह दिनांक 25-09-2019 को अथवा उससे पूर्व न्यायालय हजा में उपस्थित होकर प्रस्तुत कर सकता है अन्यथा उसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

ब अदालत विजय कुमार राय, तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग, ऊना,
जिला ऊना (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम

पेशी : 25-09-2019

मनदीप सिंह पुत्र श्री कशमीरी लाल, वासी समूरकलां, तहसील व जिला ऊना (हि0 प्र0) सायल।

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि० प्र० रा० अधिनियम, 1954 की जेर धारा 37 के तहत उप-महाल समूरकलां दायम में नाम दुरुस्ती बारे।

उपरोक्त मुकद्मा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम मनदीप सिंह पुत्र श्री कश्मीरी लाल है जबकि उप-महाल समूरकलां दायम के राजस्व अभिलेख में उसका नाम धनी राम पुत्र कश्मीरी लाल दर्ज है जो कि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दुरुस्त करके धनी राम उपनाम मनदीप सिंह पुत्र कश्मीरी लाल दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 25-09-2019 को सुबह 10.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना (हि० प्र०)।

न्यायालय विजय कुमार राय, तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना,
जिला ऊना (हि० प्र०)

दावा संख्या नं० :/Teh. Una/B&D /2019

रघुवीर पुत्र श्री राम सिंह, वासी वार्ड नं० 3, मोहल्ला गलुआ, ऊना, तहसील व जिला ऊना (हि० प्र०)

बनाम

आम जनता

दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

उपरोक्त मुकद्मा उनवान वाला में रघुवीर पुत्र श्री राम सिंह, वासी वार्ड नं० 3, मोहल्ला गलुआ, ऊना, तहसील व जिला ऊना (हि० प्र०) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसके पुत्र अमरजीत का जन्म मोहल्ला गलुआ, ऊना में दिनांक 02-07-2003 को हुआ था लेकिन अज्ञानता के कारण जन्म का इन्द्राज स्थानीय रजिस्ट्रार, जन्म व मृत्यु पंजीकरण, नगरपालिका ऊना, तहसील व जिला ऊना (हि० प्र०) में दर्ज न करवा सका है।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि यदि उपरोक्त वर्णित जन्म का इन्द्राज स्थानीय रजिस्ट्रार, जन्म व मृत्यु पंजीकरण, नगरपालिका ऊना, तहसील व जिला ऊना (हि० प्र०) में दर्ज करवाने बारे किसी को कोई उजर या एतराज हो तो वह दिनांक 25-09-2019 को अथवा उससे पूर्व न्यायालय हजा में उपस्थित होकर प्रस्तुत कर सकता है अन्यथा उसके बाद उक्त वर्णित जन्म के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

न्यायालय विजय कुमार राय, तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना,
जिला ऊना (हि0 प्र0)

दावा संख्या नं० :/Teh. Una/B&D/2019

राजेश कुमार पुत्र श्री तरलोकी नाथ, वासी मेन बाजार ऊना, तहसील व जिला ऊना (हि0 प्र0)

बनाम

आम जनता

दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

उपरोक्त मुकद्दमा उनवान वाला में राजेश कुमार पुत्र श्री तरलोकी नाथ, वासी मेन बाजार ऊना, तहसील व जिला ऊना (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसकी पुत्री अंशिका वशिष्ठा का जन्म कनवर अस्पताल, ऊना में दिनांक 09-12-2005 को हुआ था लेकिन अज्ञानता के कारण जन्म का इन्द्राज स्थानीय रजिस्ट्रार, जन्म व मृत्यु पंजीकरण, नगरपालिका ऊना, तहसील व जिला ऊना (हि0 प्र0) में दर्ज न करवा सका है।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि यदि उपरोक्त वर्णित जन्म का इन्द्राज स्थानीय रजिस्ट्रार, जन्म व मृत्यु पंजीकरण, नगरपालिका ऊना, तहसील व जिला ऊना (हि0 प्र0) में दर्ज करवाने बारे किसी को कोई उजर या एतराज हो तो वह दिनांक 25-09-2019 को अथवा उससे पूर्व न्यायालय हजा में उपस्थित होकर प्रस्तुत कर सकता है अन्यथा उसके बाद उक्त वर्णित जन्म के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

ब अदालत विजय कुमार राय, तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग, ऊना,
जिला ऊना (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम

पेशी : 25-09-2019

कृष्ण कुमार पुत्र श्री कश्मीरी लाल, वासी समूरकलां, तहसील व जिला ऊना (हि0 प्र0) सायल।

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि० प्र० रा० अधिनियम, 1954 की जेर धारा 37 के तहत उप-महाल समूरकलां दायम में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम कृष्ण कुमार पुत्र श्री कश्मीरी लाल है जबकि उप-महाल समूरकलां दायम के राजस्व अभिलेख में उसका नाम नरंजन दास पुत्र कश्मीरी लाल दर्ज है जो कि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दुरुस्त करके नरंजन दास उपनाम कृष्ण कुमार पुत्र कश्मीरी लाल दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 25-09-2019 को सुबह 10.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना (हि० प्र०)।

